

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16334 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DH DERASDARI, JR CLERK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16334 of 2003
MR PRADEEP PATEL for Petitioner No. 1-2
MR. J.M. BAROT FOR MR HS MUNSHAW for Respondent No. 1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 14/07/2004

ORAL JUDGEMENT

Heard the learned advocates.

1. The petitioners, Junior Clerks in the Gujarat Water Supply & Sewerage Board challenge the order dated 25th June, 2003. It appears that both the petitioners were appointed as Telephone Operators on temporary basis for a period of six months but the said arrangement was continued upto the year 1991. By orders dated 18th November, 1991 the petitioners' services were regularised as Telephone Operator and since then they have been absorbed in the cadre of Junior Clerk.

2. Considering their continued service since April, 1988 the petitioners were given benefit of higher pay scale on completion of 9 years w.e.f. 24th April, 1997. The said order has been revised under the impugned orders dated 25th June, 2003. It is stated that prior to 18th November, 1991 the petitioners' service was temporary service and was not computed for the purpose of seniority. For considering continuous service for the purpose of higher grade the relevant date being 18th November, 1991 the petitioners have been given benefit of higher scale on completion of 9 years' service i.e. from 19th November, 2000. On account of change in continuity in service from 18th November, 1991 the petitioners have been called upon to refund the amount of excess payment made. Feeling aggrieved the petitioners have preferred the present petition.

3. Indisputably the impugned orders dated 25th June, 2003 have been made without affording opportunity to show cause to the petitioners. Learned advocate Mr. Barot has submitted that at the time of grant of higher pay scale w.e.f. April, 1997 the petitioners had given undertaking to refund the excess amount, if any. By order dated 25th June, 2003, the petitioners' earlier service has not been considered for the purpose of grant of higher pay scale. As the impugned order has monetary implications the petitioners ought to have been given opportunity to show cause. The impugned orders being violative of principles of natural justice are quashed and set aside. It shall be open to the respondent Board to re-fix the date for grant of higher pay scale after giving opportunity to show cause to the petitioners. If desired, the petitioners may also be granted personal hearing.

4. Petition is allowed. Rule is made absolute to the above extent. The parties shall bear their own costs.

5. Learned advocate Mr. Patel has submitted that pursuant to the impugned order dated 25th June, 2003

recovery is effected from the monthly salary of the petitioners. He, however, is not aware the extent of such recovery. He submits that the amount recovered be refunded to the petitioners. The amount recovered from the salary of the petitioners pursuant to the impugned orders dated 25th June, 2003 be refunded to the petitioners on or before 31st August, 2004.

Dt: 14-7-2004

(Ms. R.M. Doshit, J)

/vgn